

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES,

Plaintiff,

vs.

COREY THOMPSON,

Defendant.

Case No. 2:10-cr-00325-RCJ-RJJ

ORDER

Defendant moves under Fed. R. Civ. P. 60(b) for relief from this Court's judgment, which denied him relief under 28 U.S.C. § 2255. Because Defendant is relitigating his Section 2255 motion without obtaining a certificate from the Ninth Circuit, the Court denies the motion as a procedurally defective successive Section 2255 motion.

FACTUAL BACKGROUND

In 2012, Defendant pleaded guilty to using and carrying a firearm during and in relation to drug trafficking crimes and possessing a firearm in furtherance of such drug trafficking offenses resulting in death, in violation of 18 U.S.C. § 924(c)(1)(A) and (j). (ECF Nos. 180, 181.) This Court sentenced Defendant to 235 months of imprisonment. (ECF No. 189.) In 2013, Defendant timely filed his first motion to vacate his sentence under Section 2255. (ECF No. 190.) The Court

1 denied his motion and declined to issue a certificate of appealability. (ECF Nos. 195, 198.) The
2 Ninth Circuit also declined to issue such a certificate. (ECF No. 200.)

3 Subsequently, Defendant filed three more motions under Section 2255. (ECF Nos. 202,
4 203, 216.) The Court denied all three for the same reason: Plaintiff had not obtained a certificate
5 from the Ninth Circuit to file a successive Section 2255 motion, (ECF No. 205, 217), despite the
6 fact that the Ninth Circuit explicitly informed Defendant of the relevant statutes and provided a
7 standard form to make such a request, (ECF No. 215). To date, there is still no such certificate on
8 this Court's docket.

9 Presently, Defendant moves for relief from the Court's denial of his initial Section 2255
10 motion, (ECF No. 190), under Rule 60(b).¹ (ECF No. 218.) He argues the Court's order is void
11 because the Court erred in its ruling on multiple grounds. (*Id.*)

12 LEGAL STANDARD


13 For a district court to consider a "second or successive motion" under Section 2255, the
14 movant must obtain certification from "a panel of the appropriate court of appeals." 28 U.S.C.
15 § 2255(h). A federal prisoner may not escape this rule by smuggling new Section 2255 claims
16 under the guise of a Rule 60(b) motion. *United States v. Buenrostro*, 638 F.3d 720, 722 (9th Cir.
17 2011) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005)). A Rule 60(b) motion presents a
18 Section 2255 "claim" when it raises a "new ground for relief" or "attacks the federal court's
19 previous resolution of a claim on the merits." *Gonzalez v. Crosby*, 545 U.S. at 532. On the other
20 hand, a Rule 60(b) motion is valid inasmuch as it raises a "defect in the integrity of the federal
21 habeas proceedings." *Id.*

22 ¹ Defendant also moves for monetary sanctions because when the Government first mailed its
23 response, it incorrectly listed Defendant's inmate number as "05257-048," instead of the correct
24 number, "05257-748." (ECF No. 221.) When the mail was returned as undeliverable, the
Government mailed the response to the correct number. (ECF No. 222.) This error does not merit
sanctions, and the Court denies this motion.

In his motion, Defendant argues that the Court’s denial of his initial motion under Section 2255 is void because the Court did not address all of his claims and applied the wrong standard. He concludes that these failures void the order by violating his due process rights. However, the Court finds that Defendant is merely attempting to relitigate the same issues by “attack[ing] the federal court’s previous resolution of a claim on the merits”—precisely what he may not do without a certificate from the Ninth Circuit to file a successive motion under Section 2255. *Gonzalez v. Crosby*, 545 U.S. at 532. Since Defendant does not have such a certificate, the Court dismisses this motion for a lack of jurisdiction.

IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment (ECF No. 218) is DENIED.

IT IS SO ORDERED.


ROBERT C. JONES
United States District Judge